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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

WARREN PIERCE,

Defendant and Appellant.

B205877

(Los Angeles County  
Super. Ct. No. TA090213)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Paul A. Bacigalupo, Judge. Reversed.

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James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and  
Beverly K. Falk, Deputy Attorneys General, for Plaintiff and Respondent.

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Warren Pierce appeals from a judgment following a jury trial in which he was convicted of lesser included misdemeanor offenses of willfully resisting, delaying, or obstructing peace officers in the discharge of their duties (Pen. Code, § 148, subd. (a)(1)) and of simple battery (Pen. Code, § 242). He contends that although the trial court correctly instructed on his defenses as they related to the charged crimes, namely that the jury was required to acquit him of the charges if his detention or arrest was unlawful, it erred in failing to provide the same instructions with respect to the lesser included offenses of which he was convicted. We find the trial court prejudicially erred in failing to instruct on these defenses to the lesser included offenses and accordingly reverse.

## **BACKGROUND**

### **Prosecution Evidence**

On New Year's Eve 2006, the night manager of the Doubletree Hotel in Carson received at least five telephone calls from guests complaining about excessive noise on the fifth floor. The manager telephoned and told the persons answering the phones in rooms 515 and 516 to "keep it down." The manager called the rooms a few more times but the persons answering the phone hung up. When the noise and complaints continued the manager sent the hotel's security officer to tell the rooms' occupants to be quieter or they would have to leave the hotel. The manager sent the security officer to the fifth floor rooms a second time with a copy of a "party waiver" form Chene Ringgold, the registered guest, had signed with directions for the security officer to order everyone out of the rooms except for the registered guest. The "party waiver" form acknowledged that holding parties, allowing more than four people in a room, making loud noise, or consuming alcohol were activities not permitted in the hotel rooms.

The occupants of rooms 515 and 516 ignored the security officer's directives. Because the rooms were already filled with people and people continued to arrive, the security officer determined that he could not handle the situation alone and advised the manager to summon sheriff's deputies to evict the occupants of rooms 515 and 516.

Deputies received a call regarding a disturbance at the Doubletree Hotel and arrived at the hotel at approximately 2:30 a.m. Six uniformed deputies spoke with the hotel manager and received a copy of the “party waiver” form Ringgold had signed. As the deputies waited for the elevators to take them to the fifth floor, two elevators arrived and six to nine people exited from each elevator. The people said they were coming from a party in rooms 515 and 516 on the fifth floor, and that the party was now over.

As the deputies exited the elevator on the fifth floor they heard loud female voices coming from room 515. Deputy Steven Sather knocked on the door several times before Ringgold opened the door. He explained that because Ringgold had had a party in violation of her agreement with the hotel she would have to leave. Ringgold was very upset and said ““I paid for this room. I don’t have to fuckin’ go anywhere.””

Pierce and his girlfriend, Twanda Ziegler, were inside the hotel room with Ringgold. Ziegler became loud and disruptive when she heard Deputy Sather tell Ringgold that she would have to leave. Deputy Sather asked Ziegler to leave the room. Ziegler walked out of the door into the hall but immediately attempted to reenter the room. Deputy Sather placed his hand on her upper chest, told her to stop, and not to try to come back in. Ziegler slapped Deputy Sather’s hand and told him something to the effect ““Get your mother fuckin’ hands off me”” or ““You can’t touch me motherfucker.”” Deputy Milroy escorted Ziegler away from the room and tried to talk to her. Ziegler struck Deputy Milroy and an altercation between them ensued.

Pierce became agitated, yelled ““That’s my girlfriend, don’t fucking touch her,”” or words to that effect, and started walking out of the room. According to Deputy Sather’s testimony, as Pierce began to pass through the doorway, he deliberately lunged into Deputy Sather using his shoulder and elbow. Deputy Sather did not want the altercation between Ziegler and Deputy Milroy in the hallway to escalate into a fight by Pierce joining them and decided to detain Pierce in the room. He grabbed Pierce’s arms in a bear hug and pushed him up against a wall. In response, Pierce, using his body weight, hurled Deputy Sather onto the opposite wall, causing Deputy Sather to lose his

hold of Pierce's hands. When Pierce raised his hand and clenched his fist as if about to strike the deputy, Deputy Blanca Arevalo punched Pierce in the face. The deputies tried to get control of Pierce's hands but somehow during the struggle the three fell on the floor with Deputy Arevalo falling on her back beneath the two men. Pierce grabbed Arevalo's legs and did not let go despite being ordered repeatedly to release his grip. Deputy Arevalo felt so much pressure on her leg that she thought Pierce was going to break it. When she felt her knee hyperextend she struck Pierce with her flashlight but Pierce still did not release her leg. Deputy Sather punched Pierce, ordered him to release his grip on Deputy Arevalo's legs, and repeatedly ordered him to place his hands behind his back. Pierce did not respond to the deputies' commands.

Ringgold had been inside the room during the struggle with Pierce and was "yelling" at the deputies the entire time. At some point Deputy Sather opened the hotel door and the deputies who had been outside in the hallway came inside the room and handcuffed both Pierce and Ringgold. As a deputy approached Ringgold she struck him with the camera she had been holding in her hand and slapped his chest. The deputy subdued her and the camera fell to the ground. The deputy did not remove the camera from the hotel room.

Deputy Arevalo sustained bruises on her legs, cuts on her fingers, and broken fingernails.

### **Defense Evidence**

Chene Ringgold testified that she had rented rooms 515 and 516 for New Year's Eve 2006, with one room for herself and the other room for her friend Ziegler and Ziegler's boyfriend Pierce. Pierce and Ziegler were in the room with her when the deputies arrived and asked them all to leave. The deputies were calm and polite. She was also calm and never raised her voice. She saw Pierce as he was attempting to exit and he did not bump into Deputy Sather. Ringgold did not leave the room although Deputy Sather told her she would have to leave and instead sat on the couch. She watched the struggle between Pierce and the deputies and videotaped it. Ringgold denied

slapping or hitting the deputy with her camera. She testified that the deputy snatched her camera from her, and all her property except the camera was returned to her. She filed claims for its loss.

### **Procedural Background**

As pertinent to this appeal, an information charged Pierce in counts one and two with the felony offenses of resisting an executive officer in the performance of his or her duties in violation of Penal Code section 69. Counts three and four charged Pierce with the misdemeanor offenses of battery on a peace officer. (Pen. Code, § 243, subd. (b).) The information alleged that Pierce had suffered three prior felony convictions for which he had served three prison terms. (Pen. Code, § 667.5, subd. (b).)

The jury found Pierce not guilty of the offenses charged in counts one and two but guilty of the lesser included misdemeanor offenses of resisting, obstructing, or delaying a peace officer in the performance of his or her lawful duties. (Pen. Code, § 148, subd. (a)(1).) The jury found Pierce not guilty of the offense charged in count three, battery on a peace officer, but found him guilty of the lesser included offense of simple battery. (Pen. Code, § 242.) The jury acquitted Pierce of the charge in count four.

The court imposed and suspended a sentence of two years and six months in county jail. The court imposed related fines and fees and a term of 36 months of probation on certain conditions, including the conditions that Pierce serve 60 days in county jail and enroll in an anger management course.

Pierce appeals from the judgment to challenge the adequacy of the court's instructions regarding potential defenses to the lesser included offenses.

## **DISCUSSION**

### **General Principles Regarding the Court's Duty to Instruct on Defenses**

"It is well settled that a defendant has a right to have the trial court, on its own initiative, give a jury instruction on any affirmative defense for which the record contains substantial evidence (*People v. Michaels* (2002) 28 Cal.4th 486, 529)—evidence

sufficient for a reasonable jury to find in favor of the defendant (*Mathews v. United States* (1988) 485 U.S. 58, 63)—unless the defense is inconsistent with the defendant’s theory of the case (*People v. Breverman* (1998) 19 Cal.4th 142, 157). In determining whether the evidence is sufficient to warrant a jury instruction, the trial court does not determine the credibility of the defense evidence, but only whether ‘there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt.’ [Citations.]” (*People v. Salas* (2006) 37 Cal.4th 967, 982-983.)

Only detentions based on reasonable suspicion (*People v. Wells* (2006) 38 Cal.4th 1078, 1083) and arrests made with probable cause and without unreasonable or excessive force are lawful (*People v. Curtis* (1969) 70 Cal.2d 347, 355-357; *People v. Olguin* (1981) 119 Cal.App.3d 39, 46-47).

### **Instructions on Defenses to Resisting, Obstructing, or Delaying a Peace Officer**

The trial court properly instructed the jury that in order to convict Pierce of resisting an executive officer in the performance of his or her duties (Pen. Code, § 69) and battery on a peace officer (Pen. Code, § 243, subd. (b)) as charged in the information, the deputies’ attempts to detain or arrest him must have been lawful. The court’s instructions defined a lawful arrest as an arrest made with “probable cause,” or when “the facts known to the arresting officer at the time of the arrest would persuade someone of reasonable caution that the person to be arrested has committed a crime.” (CALCRIM No. 2670.) The court’s instructions also defined a lawful detention as a detention made when “specific facts known or apparent to the officer lead him or her to suspect that the person to be detained has been, is, or is about to be involved in activity relating to a crime.” (CALCRIM No. 2670.) The jury also received instructions defining unreasonable or excessive force and explained a defendant’s right to use force “that he or she actually believes is reasonably necessary to protect himself or herself from the

officer's use of unreasonable or excessive force . . . ."<sup>1</sup> The court, however, did not instruct the jury that these instructions also applied to the lesser included offenses.

Pierce contends that the court's failure to so instruct constituted prejudicial error. We agree.

The People argue that both Pierce's battery of Deputy Sather as he tried to exit the hotel room and Pierce's attempt to exit the hotel room to assist his girlfriend support a

<sup>1</sup> Specifically, the trial court instructed the jury with CALCRIM No. 2670 as follows: "A peace officer is not lawfully performing his or her duties if he or she is using unreasonable or excessive force when making or attempting to make an otherwise lawful arrest or detention. A peace officer may legally detain someone if the person consents to the detention or if, one, specific facts known or apparent to the officer lead him or her to suspect that the person to be detained has been, is, or is about to be involved in activity relating to a crime. And two, a reasonable officer who knew the same facts would have the same suspicion. Any other detention is unlawful.

"In deciding whether the detention was lawful, consider evidence of the officer's training and experience and all the circumstances known by the officer when he or she detained a person. A peace officer may legally arrest someone if he or she has probable cause to make the arrest. Any other arrest is unlawful. Probable cause exists when the facts known to the arresting officer at the time of the arrest would persuade someone of reasonable caution that the person to be arrested has committed a crime. In deciding whether the arrest was lawful, consider evidence of the officer's training and experience and all of the circumstances known by the officer when he or she arrested the person.

"Special rules control the use of force. A peace officer may use reasonable force to arrest or detain someone or prevent escape to overcome resistance or in self-defense. If a person knows or reasonably should know that a peace officer is arresting or detaining him, the person must not use force or any weapon to resist an officer's use of reasonable force. However, you may not find the defendant guilty of resisting arrest if the arrest was unlawful, even if the defendant knew or reasonably should have known that the officer was arresting him.

"If a peace officer uses unreasonable or excessive force while detaining or attempting to detain a person, that person may lawfully use reasonable force to defend himself or herself. A person being arrested uses reasonable force when he or she, one, uses that degree of force that he or she actually believes is reasonably necessary to protect himself or herself from the officer's use of unreasonable or excessive force and two, uses no more force than a reasonable person in the same situation would believe is necessary for his or her protection."

conclusion that the detention and later arrest were lawful. Therefore, they contend the failure to properly instruct was not prejudicial. This argument misses the point. Other evidence, if believed by the jury, supported a conclusion that the detention and later arrest were not lawful. Ringgold testified that officers ordered everyone to leave the room and that Pierce did not bump into Deputy Sather. A properly instructed jury could thus have concluded that Pierce did not batter Deputy Sather and that he was only attempting to exit into the hallway.

Given the conflicting evidence, it is reasonably probable Pierce would have achieved a more favorable result had the court given the correct instructions and thus we cannot find the instructional error harmless under either standard of prejudice. (*People v. Salas, supra*, 37 Cal.4th at p. 984 [“We have not yet determined what test of prejudice applies to the failure to instruct on an affirmative defense”]; *Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

### **Instructions on Simple Battery**

Pierce contends the trial court also erred in failing to instruct sua sponte on self-defense in connection with the simple battery charge. He contends the evidence of him grappling and struggling with the deputies to defend himself against the deputies’ excessive use of force by punching him in the face and hitting him with a flashlight supported the giving of instructions on self-defense. We agree.

Regarding the offense of resisting, obstructing or delaying a peace officer in the performance of his or her lawful duties, the court gave instructions on the use of excessive or unreasonable force and instructed the jury that “If a peace officer uses unreasonable or excessive force while detaining or attempting to detain a person, that person may lawfully use reasonable force to defend himself or herself.” (CALCRIM No. 2656.) The court also instructed that “A peace officer is not lawfully performing his or her duties if he or she is using unreasonable or excessive force in his or her duties.” (CALCRIM No. 2656 (marked CALCRIM No. 2672).) The court’s instructions on simple battery—as distinct from the charged crimes of battery on a peace officer—did



not include separate instructions on the right to use self-defense against the deputies' unreasonable and excessive force as a defense to the simple battery charge.

The jury in this case was not persuaded that Pierce had committed a battery on a peace officer and acquitted him of the greater charge. Had the jury been instructed that Pierce similarly had a right to defend himself against unreasonable and excessive force as a defense to the simple battery charge there is a reasonable probability that the jury would have acquitted him of the lesser charge as well. This is especially true in light of the conflicting evidence whether Pierce had been properly detained in the first instance. We are thus unable to find that the instructional error was harmless.

### **DISPOSITION**

The judgment is reversed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

TUCKER, J.\*

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\* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.